



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes OPU FFL

### Introduction

This hearing dealt with the landlord's application pursuant to section 55 and 72 of the *Residential Tenancy Act* (the *Act*) for an order of possession for unpaid rent and utilities and to recover the filing fee from the tenant.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

As both parties were present service was confirmed. The tenants confirmed receipt of the landlord's materials and said they had not served any materials of their own. Based on the testimonies I find that the tenants were served with the landlord's 10 Day Notice, Notice of Hearing and evidence in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to recover the filing fee from the tenant?

### Background and Evidence

This periodic tenancy began in April 2019. Monthly rent is \$500.00 payable on the first of each month. No security deposit was collected.

The landlord testified that the tenants have failed to pay rent for October 2019 and a 10 Day Notice was issued dated October 30, 2019. The landlord said that the tenants have failed to pay any rent thereafter. The tenants testified that they have paid full rent for October and November 2019 in cash directly to the personal landlord. The tenants say that payment was not accepted for December 2019 and has not been paid. The tenants say that they signed a written tenancy agreement with the landlord's former spouse providing that this is a fixed-term tenancy of one -year but no documentary evidence was submitted.

### Analysis

In accordance with subsection 46(4) of the *Act*, a tenant must either pay the overdue rent or file an application for dispute resolution within five days of receiving a valid 10 Day Notice.

In the matter at hand there is little documentary evidence but based on the testimonies of the parties, I find that there is an enforceable tenancy agreement whereby the tenants are obligated to pay monthly rent in the amount of \$500.00 by the first of each month.

The tenants submit that they have paid full rent while the landlord disputes that any rent was received and has issued a 10 Day Notice for an arrear of \$500.00 on October 1, 2019.

In accordance with Rule of Procedure 6.6, the evidentiary onus is on the applicant to show on a balance of probabilities the basis for their claim. In the present case, I am provided with contradictory testimonies neither of which is substantiated by any documentary evidence. I find that under the circumstances with two equally likely scenarios the landlord has not met their evidentiary burden on a balance of probabilities, to show that it is more likely than not, that there is a rental arrear for this tenancy.

I am not satisfied on the basis of conflicting testimonial evidence that the tenants have breached the tenancy agreement by failing to make rental payments and that there is a basis for the 10 Day Notice. I find there is insufficient evidence in support of the landlord's claim.

Accordingly, as the landlord has not met their evidentiary burden, I dismiss the application in its entirety.

### Conclusion

The landlord's application is dismissed with leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 30, 2019

---

Residential Tenancy Branch